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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,815	06/26/2003	Francois Cottard	239098US0	2794
22850	7590	12/21/2005	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	
DATE MAILED: 12/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/603,815

Applicant(s)

COTTARD ET AL.

Examiner

Eisa B. Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

1 This action is responsive to the amendment filed on October 6, 2005.

2 The rejection of claims 1-4, 8-11, 13-22, 25-27 and 30 under 35 U. S.C. 102(b) as being anticipated by Casperson et al. (US 5,376,146), is withdrawn because Casperson et al. does not teach or disclose the claimed limitation of metasilicates.

3 The rejection of claims 1, 3-4, 11, 13-16, 19-22 and 24-26 under 35 U. S.C. 102(b) as being anticipated by Dias et al. (US 6,004,355), is withdrawn because Dias et al. does not teach or disclose the claimed limitation of metasilicates.

### NEW GROUND OF REJECTION

#### *Claim Rejections - 35 USC § 103*

4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-23 and 25-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casperson et al. (US 5,376,146) in view of Duffer et al. (US 2003/0028979 A1).

Casperson et al. (US' 146) teaches a composition comprising oxidation dyes (see col. 5, line 33), alkalizing agent of sodium silicate and alkanolamine of ethanolamine as claimed in claims 1-4 (see col. 5, lines 12-29), wherein the alkanolamine presents in the amount of 0.1 to 5% as claimed in claims 5-10 (see col. 5, line 31 and col. 11, Examples 1-40 composition No. 5), wherein the pH of the composition is in the ranges of 7 to 11 as claimed in claims 11-12 (see col. 5, line 10), wherein the oxidation dye is selected from oxidation bases of paraphenylenediamines

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as claimed in claims 13-15 (see col. 5, lines 40-41) and couplers of 1,3-phenylenediamines (meta-phenylenediamines) as claimed in claims 16 and 20 (see col. 7, lines 28-29), wherein the oxidation bases and couplers are employed in the amounts of .0005% to about 5% which are fall within the claimed ranges as claimed in claims 19 and 21 (see col. 8, lines 30-34), wherein the addition acid salts are sulfates and hydrochlorides as claimed in claims 17-18 (see col. 6, lines 25-26), wherein the composition comprises organic solvents as claimed in claim 22 (see col. 9, line 25), wherein the organic solvents in the amounts of 0% to 5% which is overlapped with the claimed range as claimed in claim 23 (see col. 9, line 25), wherein the composition further comprises hydrogen peroxide as claimed in claims 25-26 (see col. 9, lines 52-53). Casperson et al. (US' 146) also teaches a method for dyeing hair comprising applying to the hair the dyeing composition as described above and wherein the composition is remained for a period of time after which the composition is washed from the hair as claimed in claims 27-30 (see col. 10, lines 50-66).

The instant claims differ from the reference by reciting a composition comprising alkalinizing agent of metasilicates.

Duffer et al. (US' 979 A1) in analogous art of hair dyeing formulation, teaches a composition comprising alkalizing agents of sodium metasilicate and sodium silicate (see page 3, paragraph, 0039).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Casperson et al. (US' 146) by replacing the alkalizing silicate with the alkalizing metasilicate as taught by Duffer et (US' 979 A1) to arrive at the claimed invention. Such a modification would

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be obvious because Casperson as a primary reference suggests the use of alkalizing agent of silicate in the composition. Duffer et al. as a secondary reference clearly teaches the equivalence of alkalizing agents of silicates and metasilicates and their mixture in the composition, and, thus, the person of ordinary skill in the art would be motivated to replace the silicates in the composition of Casperson with the metasilicates as taught by Duffer with reasonable expectation of success to arrive at the claimed invention and would expect such composition to have similar properties as those claimed, absent unexpected results.

With respect to claims 31-33, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a composition comprising metasilicates and alkanolamines in the claimed ration, because Duffer et al. (US' 979 A1) clearly teaches a mixture of alkalizing agents that include metasilicates and alkanolamine in the amounts of 1-5% which within the claimed amounts for imparting alkalinity (see page 3, paragraph, 0039), and, thus, a person of the ordinary skill in the art would be motivated to optimize the ratio between these alkalizing agents with a reasonable expectation of success for imparting alkalinity of the composition, and would expect such a composition to have similar properties to those claimed, absent unexpected results.

5        Claims 1, 3-4, 11, 13-16, 19-22 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias et al. (US 6,004,355) in view of Duffer et al. (US 2003/0028979 A1).

Dias et al. (US' 355) teaches a hair dyeing composition comprising oxidation dyes of para-phenylenediamines in the amount of 0.24% which is within the claimed range as claimed in claims 1, 13-15 and 19 (see col. 32, Example I), buffering (alkalizing) agent of monoethanolamine as claimed in claims 3-4 (see col.22, line 27), magnesium silicate (see col.

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31, lines 3-4), couplers of m-aminophenols in the amount of 0.06% which within the claimed range as claimed in claims 16, 20-21 (see col. 32, Example I), organic solvents as claimed in claim 22 (see col. 25, lines 10-21), cationic polymers in the amount of 0.05 to 2% and nonionic surfactants in the amount of 1.5 wherein the amounts of the polymers and nonionic surfactants are within the claimed ranges as claimed in claim 24 (see col.30, lines 55-56, col. 31, line 22 and col. 32, Example I), wherein the composition also comprises oxidizing agent of hydrogen peroxide as claimed in claims 25-26 (see col. 22, lines 56-58), wherein the composition has a pH in the range of 7 to 10.5 which is within the claimed range as claimed in claim 11 (see col. 21, line 67).

The instant claims differ from the reference by reciting a composition comprising alkalinizing agent of metasilicates.

Duffer et al. (US' 979 A1) in analogous art of hair dyeing formulation, teaches a composition comprising alkalizing agents of sodium metasilicate and sodium silicate (see page 3, paragraph, 0039).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Dias et al. (US' 335) by replacing the alkalizing silicate with the alkalizing metasilicate as taught by Duffer et (US' 979 A1) to arrive at the claimed invention. Such a modification would be obvious because Dias et al. as a primary reference suggests the use of alkalizing agent of silicate in the composition. Duffer et al. as a secondary reference clearly teaches the equivalence of alkalizing agents of silicates and metasilicates and their mixture in the composition, and, thus, the person of ordinary skill in the art would be motivated to replace the silicates in the composition of Dias et

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al. with the metasilicates as taught by Duffer with reasonable expectation of success to arrive at the claimed invention and would expect such composition to have similar properties as those claimed, absent unexpected results.

***Response to Applicant's Arguments***

6 Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
Primary Examiner  
Art Unit 1751

December 13, 2005